

REMARKS / ARGUMENTS

This is intended as a full and complete response to the Office Action dated May 18, 2006, having a shortened statutory period for response set to expire on August 18, 2006. Please reconsider the claims pending in the application for reasons discussed below.

Claims **1-20** are pending in the application. Claims **21-40** remain pending following entry of this response. Claims **1-20** have been canceled without prejudice. New claims **21-40** have been added to recite aspects of the invention. Applicants submit or Applicant submits that the new claims do not introduce new matter.

Claim Rejections under 35 U.S.C. § 101

Claims 1 – 6 and 16 – 20 are rejected under 35 U.S.C. § 101 because the Examiner asserts that these claims are directed to non-statutory subject matter. Applicant notes that claims 1 – 6 and 16 – 20 are cancelled with this response. Accordingly, Applicant believes no response to this rejection is required.

Claim Rejections under 35 U.S.C. § 112, second paragraph

Claims 1 – 6 and 16 – 20 are rejected under 35 U.S.C. § 112 second paragraph. Applicant notes that claims 1 – 6 and 16 – 20 are cancelled with this response. Accordingly, Applicant believes no response to this rejection is required.

Claim Rejections under 35 U.S.C. § 112, first paragraph

Claims 1– 20 are rejected under 35 U.S.C. § 112 first paragraph. Applicant notes that claims 1 – 6 and 16 – 20 are cancelled with this response. Accordingly, Applicant believes no response to this rejection is required.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable *Huang, et al* ("*Huang*"). Applicant respectfully traverses this rejection.

The Examiner bears the initial burden of establishing a prima facie case of obviousness. See MPEP § 2142. To establish a prima facie case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2143. The present rejection fails to establish at least the third criteria.

New claim 21 recites a method for identifying an excess energy capacity in a production supply chain that includes the steps of identifying, by a supply chain optimizer, a potential production configuration for the production supply chain for a supply chain operator capable of both consuming and selling electricity while operating the production supply chain, wherein the potential production configuration reduces a production output and energy consumption for at least some portion of the production supply chain during a time period where a contracted price for electricity exceeds a forecasted price for electricity and determining, using a potential action valuation model, whether to reduce the production output of the production supply chain to create the excess energy capacity for the production supply chain during the time period. Claims 35 and 28 recite similar limitations.

Huang discloses a “decision support system for managing an agile supply chain that includes both a server and a client side.” While *Huang* may disclose aspects of a system configured to optimize a supply chain, *Haung* does not disclose any aspects of a system used to identify excess energy capacity within a production supply chain. See *Huang*, Abstract. Nothing in the cited passages from *Haung* disclose a method for a supply chain operator to identify, create, and sell an excess energy capacity in a supply chain by actually reducing energy consumption for at least some portion of the production supply chain during a time period where a contracted price for electricity exceeds a forecasted price for electricity, in the manner recited by the present claims. In fact, using the “an agile

supply chain" of *Huang*, doing so may lead to a supply chain configuration that, by the standards of the optimizer disclosed in *Huang*, is sub optimal.

Accordingly, Applicant submits that the present claims are patentable over the *Haung* reference and, therefore, respectfully requests that the rejection be withdrawn and that claims 21-39 be allowed.

CONCLUSION

Accordingly, it is believed that the present application now stands in condition for allowance, and allowance of the claims is respectfully requested. Early notice to this effect is earnestly solicited. Should the Examiner believe a telephone call would expedite the prosecution of the application, he is invited to call the undersigned attorney at the number listed below.

Respectfully submitted,

/Gero G. McClellan, Reg. No. 44,227 /
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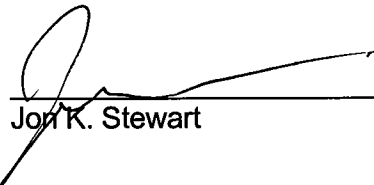
Date: **August 18, 2006**

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Appl. No. 09/916,548
Amdt. dated August 18, 2006 *****
Reply to Office Action of May 18, 2006

CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, or electronically transmitted to the U.S. Patent and Trademark Office via EFS-Web to the attention of Examiner Ojo O. Oyebisi, on August 18, 2006:



Jon K. Stewart